

**AMNESTY
INTERNATIONAL**



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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Committee,

Inquiry into the *Human Rights Legislation Amendment Bill 2017*

I am writing on behalf of Amnesty International Australia's activists and supporters regarding the Committee's inquiry into the *Human Rights Legislation Amendment Bill 2017*. Amnesty International welcomes the opportunity to provide this brief comment.

Amnesty International provided a detailed submission to the recent Parliamentary Joint Committee on Human Rights' inquiry.¹ In that submission, with regards to the *Racial Discrimination Act 1975* (RDA), Amnesty International noted that sections 18C and 18D have now been in place for over twenty years. Case law in that time demonstrates the courts have finely balanced the objects of the Act with the expressly stated intention of the Parliament not to infringe on freedom of expression and uphold its international obligations to prevent and protect people from racial discrimination. Given this, 18C and 18D do not require amendment. Further, amending the RDA will give a license to further racism in Australia, which has significant consequences for culturally diverse communities.

Amnesty International also called on the Australian Government to ensure the Australian Human Rights Commission (AHRC) maintains an accessible, fair and effective complaints resolution process for people who experience discrimination on any of the grounds prohibited under international human rights law, including race, colour or national or ethnic origin. We also called for the Australian Government to ensure the AHRC's independence was protected.

Amnesty notes that the bipartisan inquiry - which received thousands of submissions - did not recommend any changes to sections 18C and 18D.

Changes to Part IIa of the *Racial Discrimination Act*

Amnesty International opposes the amendments to s18C(1)(a) of the RDA, which removes the words "offend, insult, humiliate" and substitutes them with "harass."

Amnesty International is concerned that this change will likely weaken the current legal protections which exist against racial vilification in Australia. We are concerned that this replaces words which have had twenty years of case law and legal interpretation and substitutes them -- this creates uncertainty in the law as to how the courts will interpret "harass" in this context, whereas the current case law has created a sufficiently high threshold that balances freedom of speech with the right to live free from racial vilification.

¹ See: <http://www.aph.gov.au/DocumentStore.ashx?id=f7a4aea5-5eb2-47e6-adcf-b943485e2391&subId=462464>

Amnesty International also opposes the insertion of a new standard of "reasonableness" in s18C(2)(A). The current objective test interpreted by the courts - where the conduct is interpreted according to the standard of a reasonable or average person of the particular cultural or ethnic group being affected - is a better test. To replace this test with one where the reasonable person is a member of the general Australian community - a community which for the majority does not suffer the impacts of racism - sets a much higher burden and does not reflect the impact of statements on the affected group.

All of this ignores the fact that section 18D provides ample protection for freedom of speech. Freedom of speech is a fundamental human right, but it is not an unfettered right: it has corresponding responsibilities and there must be a balancing of rights. Amnesty International is of the view that sections 18C and 18D, working together, strike the right balance.

Access to justice issues

Amnesty International is very concerned a number of the Bill's procedural changes will have an adverse impact on access to justice.

Amnesty International is concerned that changes to costs could have a chilling effect on persons affected by racial vilification engaging in the conciliation process and bringing claims in court. For example, Aboriginal and Torres Strait Islander communities are deeply impacted by racism but also experience severe financial disadvantage. These changes could limit access to justice for disadvantaged communities who experience racism.

We fail to see the reasons why the time limit is being reduced from 12 months to six months. As was argued before this Committee by the Human Rights Law Centre in its hearing on 24 March, this could most impact vulnerable communities who need the most assistance in both understanding and exercising their legal rights, such as non-English speaking communities, people with disabilities, and people for whom the legal system is often out of reach for financial reasons. Amnesty supports this view.

The need to hear from affected communities

The changes being contemplated by the bill, especially those regarding section 18C could potentially have a profound impact on the way in which racism impacts Australians from diverse backgrounds. While we note the Parliamentary Joint Committee on Human Rights' Freedom of Speech inquiry heard from a wide range of culturally diverse people and organisations, there was no bill being contemplated at that time: now there is a concrete proposal before the Parliament, impacted communities must be heard.

Racism has severe impacts on communities across the country, especially for Aboriginal and Torres Strait Islander people and other Australians from a wide range of linguistic and cultural backgrounds. Racism and discrimination contribute to poor mental health, increased self-harm and suicide, decreased school attendance and lower workplace productivity, and participation in society more broadly.

It is completely unacceptable that, as of writing, this inquiry denied Aboriginal and Torres Strait Islander people, representatives and organisations from being heard at the hearing on Friday. While the Committee heard from the Federation of Ethnic Communities Council of Australia, not a single Indigenous person or organisation was invited to speak and the Aboriginal Legal Services were present at the hearing and denied the ability to speak.

The haste with which the Australian Government has moved to shorten the Committee process means this legislation will not receive the scrutiny it warrants. An inquiry which goes for three working days is simply unreasonable. We do not accept that interested parties have already had an opportunity to provide comment through the Freedom of Speech Inquiry, as at that point there was no draft bill to comment on.

Amnesty International opposes the changes this bill proposes to section 18c of the *Racial Discrimination Act 1975*. We call on the Australian Senate to reject this legislation.

Yours sincerely,

Claire Mallinson
National Director